

Hon. Thomas S. Zilly

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT
AT SEATTLE

BRUCE EKLUND, an individual,

No. CV06-1815 Z

Plaintiff,

vs.

THIRD AMENDED
COMPLAINT
FOR, WRONGFUL
DISCHARGE IN
VIOLATION OF PUBLIC
POLICY, ETC.

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DEFAMATION

THE CITY OF SEATTLE, SEATTLE
MUNICIPAL COURT, a municipal
corporation; FRED BONNER and JANE
DOE BONNER, and their marital
community; GAYLE TAJIMA and JOHN
DOE TAJIMA, and their marital
community; YOLANDA WILLIAMS and
JOHN DOE WILLIAMS and their marital
community; MARK PARCHER and JANE
DOE PARCHER and their marital
community,

Defendants.

COME NOW the plaintiff Bruce Eklund and alleges as follows:

1. Bruce Eklund (Eklund) is a resident of Federal Way, King County, Washington.
2. The Seattle Municipal Court ("SMC") is part of the City of Seattle, a municipal corporation.
3. Defendants FRED BONNER and JANE DOE BONNER; GAYLE TAJIMA and

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THIRD AMENDED COMPLAINT
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EXHIBIT A

1 JOHN DOE TAJIMA; YOLANDA WILLIAMS and JOHN DOE WILLIAMS; and MARK
 2 PARCHER and JANE DOE PARCHER and reside, on information and belief, in King
 3 County, Washington, with defendant Bonner residing in the city of Seattle.

4 4. Defendants FRED BONNER, GAYLE TAJIMA, YOLANDA WILLIAMS and
 5 MARK PARCHER were at relevant times employees of SMC, and will be referred to herein
 6 by their last names.

7 5. On information and belief, in all relevant respects these defendants employed by
 8 SMC jointly decided on, agreed to, or knowingly helped carry out or acted in concert as to all
 9 wrongful acts complained of herein.

10 6. Eklund has complied with the requirement of giving prior notice to the City of Seattle
 11 of this claim, and the proper period has elapsed prior to commencement of this action since
 12 such notice was duly given.

13 6.5 Defendants were duly served. Thereafter, Defendants removed this action to
 14 the United States District Court for the Western District of Washington, at Seattle, on or
 15 about December 22, 2006.

17 **FACTS**

18 7. In May 2001 the SMC hired Eklund and in Spring of 2003 promoted him by laying him off
 19 then re-hiring him. SMC promoted Eklund to a position as a Strategic advisor/budget analyst, to
 20 delve into the SMC database and come up with information including information sought by City of
 21 Seattle the Department of Finance, on amounts that SMC was "losing" for the City due to fines
 22 reduced or waived by SMC, including information requested in writing and/or in electronic mail by
 23 officials of the Department of Finance. The SMC created Eklund's new position in order to better

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1 assess its own performance regarding operations, revenue and other,

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2 8. Eklund's direct supervisors included Tajima, in charge of Court finances/budgets;
3 Judge Bonner, who was at this time Presiding Judge with supervisory control over the entire
4 Court; Court Administrator Williams, who reported to the judges and had supervisory
5 functions over all aspects of court operations and revenues (except for adjudication); and
6 Parcher, Director of Operations.

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7 9. Upon being hired, Eklund and SMC (through a letter or contract signed by Tajima)
8 entered into a written contract that provided that Eklund would receive described salary and
9 compensation, that he would perform described duties, that he would receive performance
10 reviews leading to the ability to receive raises or be promoted further, and that the first
11 performance review would be sooner than normal and thereafter there would be performance
12 reviews every six months. This document was signed by Tajima for SMC and by Eklund.

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13 10. The Department of Finance develops budget and City revenue information used by the
14 executive branch and the legislative branch of the City of Seattle who determine the City budget, and
15 relied on by the public, which is sovereign over such governments. The Department of Finance
16 projects City revenues including parking ticket revenues. To project revenues and budgets the
17 Department of Finance obtains revenue information from all City departments including SMC.

Deleted: As a result of this written contract and their understanding, Eklund was not an at will employee because Tajima promised Eklund a certain period of employment and/or raises at certain definite periods, as part of his contract, and/or that he would only be discharged for cause.

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18 11. Prior to this time, the City had cut the SMC budget.

19 12. Defendants feared further SMC budget cuts or cuts in judge or magistrate positions.

20 Defendants had previously been embarrassed by prior revelations of judicial trips to Hawaii and
21 feared more bad news being given to the public.

22 13. Certain state statutes set certain minimum amounts of certain fines to be given over to

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1 purposes such as local governments' law enforcement and public health facilities.

2 14. The SMC was unaware of whether or not it was complying with these statutes, was unaware
3 of the amounts lost to fine reductions and had not previously provided such information to the City.

4 15. Eklund appropriately fulfilled his job duties, including obtaining the information sought and
5 producing various reports.

6 16. Defendants wrongfully suppressed such reports and hid and jointly agreed to hide and
7 suppress the information sought.

8 17. In October 2003 Eklund produced a report covering January - May 2003 showing the amount
9 of fine reductions for parking and traffic tickets and in October 2003 Eklund produced a second
10 report covering July 2002 through May 2003.

11 18. These reports showed significant sums of hundreds of thousands of dollars were being lost
12 through fine reductions.

13 19. Tajima, Parcher, Williams and Judge Bonner were alarmed at the news, and jointly decided to
14 suppress and to direct Eklund to suppress such reports and such information, including, among other
15 directions, directions given by Tajima and Parcher at a closed door meeting with Eklund in which
16 they told Eklund to not reveal this information to the City or the public, to not make any copy of the
17 reports, to not make any copy that would be discoverable under the public disclosure laws, and in
18 which copies at the meeting were physically thrown in the trash can.

19 20. At this meeting and at other times Eklund protested the directives to hide and suppress this
20 information and reports, rather than release it to the City and through the City to the public.

21 21. Tajima stated to Eklund the information would be politically detrimental and could lead to
22 budget cuts and loss of magistrates' and/or judges' positions.

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22. On information and belief, SMC and all defendants employed by SMC jointly discussed, were aware of, and decided to suppress this information by directing Eklund to keep it confidential and not reveal it, then jointly decided to retaliate against him and punish him for standing up for disclosure of this information.

23. In early 2004 Eklund gave Bonner a memo showing correctly that the SMC was violating state laws which mandated certain portions of certain fines be paid to fund various programs such as public health and safety.

24. Defendants directed Eklund to suppress this information too, over Eklund's protest that this information should be disclosed and that SMC should not violate the law.

25. On or about June 15, 2004, Tajima sent Eklund an e mail stating Judge Bonner "has to be very careful with" the information on revenues that Eklund generated, and, "[we] don't want DoF [that is, the City of Seattle Department of Finance] to poke around to try to confirm" that fine reductions were losing a great deal of revenue for the City of Seattle. On information and belief, Tajima wrongfully failed to keep a copy of this e mail as required by law.

27.1 In July 2004, Eklund had complained in writing to the Seattle Ethics and Elections Commission and the Mayor about the wrongdoing by SMC discussed herein.

27.2 In retaliation for Eklund's position that the parking revenue information should be given to the Department of Finance and that SMC should not lie or misrepresent SMC's ability to provide requested information, and/or in retaliation for his complaining to the Seattle Ethics and Elections commission and the Mayor, SMC officials named herein terminated Eklund without cause.

27.3. Starting in about October of 2003, and continuing to the present, SMC and the individual defendants employed by SMC retaliated against and punished Eklund for his standing up for

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1 disclosure, compliance with law, and his whistle blowing, including changing terms of work,
 2 spurious or pretextual investigations and allegations, violating his contract by failing to promote or
 3 give raises, and ultimately by terminating his employment, for wrongful motives and in an improper
 4 manner, then by defaming him in his personnel file and through statements to the media..

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5 28. SMC claimed Eklund "fixed tickets" and misused his public office by obtaining reductions in
 6 fines that had been added on to his own handful of unpaid parking tickets, but this was an incorrect
 7 claim and a pretext because among other reasons (a) he paid underlying tickets and most of the fines
 8 and the amounts of the fine reductions were trivial or in line with those obtained by an ordinary
 9 citizen, (b) he did not change his own fines or physically change the database himself, and instead
 10 obtained fine reductions in the same manner used by the public, to wit, going up to the public counter
 11 and asking an SMC employee to waive certain additional fines or penalties; (c) Eklund did not
 12 violate any work rule or policy, (d) other SMC employees engaged in similar conduct; no other SMC
 13 employee was terminated for any similar conduct, and/or (e) the Court had instituted a general policy
 14 allowing persons with tickets to generally obtain such fine reductions and members of the public
 15 received similar treatment as Eklund.

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17 29. On or about July 29, 2004 the SMC and the supervisors named herein discharged Eklund for
 18 this alleged misconduct regarding parking tickets and put documents in his personnel file stating that
 19 he had in substance abused his office, misused his office, had engaged in prohibited activity, had
 20 acted unethically, and/or had "fixed" his tickets.

22 30.1. There was no proper name clearing hearing in connection with this discharge because at or in
 23 connection with a purported name clearing hearing (a) Judge Bonner refused to hear or consider
 24 Eklund's response to the allegations including his entire complaint of retaliation, (b) any other

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1 decision makers followed Judge Bonner's decision, (c) Judge Bonner and others at the name clearing
 2 hearing could not properly hear a claim of retaliation implicating themselves in improper and
 3 unethical conduct.

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4 30.2. After July 29, 2004 SMC and the supervisors named herein altered these investigatory
 5 findings and republished and changed the documents in his personnel file without conducting a name
 6 clearing hearing.

7 31. The real reason for the termination was Eklund's standing up for disclosure of information
 8 relative to SMC that the Department of Finance, executive and legislative branches of the City, the
 9 media and the public have a right to know, if this is a democracy, including his earlier protests to his
 10 supervisors, and his whistle blowing to others.

12 32.1. At all relevant times defendants have known that information in Eklund's personnel file is
 13 publicly disclosable under Washington law could and likely would be made available to the media.

14 32.2. When defendants terminated Eklund they informed him that information in Eklund's
 15 personnel file is disclosable and could or would be made available to the media.

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16 32.3. Beginning shortly after the discharge of Eklund, on information and belief, the SMC and
 17 individual defendants employed by SMC provided false information to the Seattle Times about
 18 Eklund, to carry out their purpose that the negative information regarding Eklund that they placed in
 19 his personnel file would damage him by being spread to the general public.

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21 32.4. On information and belief, in July or August of 2004, SMC officials including those named
 22 herein or others acting for them, told Seattle Times reporters, orally or in writing, that Eklund was
 23 one of five SMC employees who had "fixed tickets", misused their public offices, acted unethically,
 24 obtained special benefits not available to the public or other SMC employees, violated Court or city

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1 policies, and engaged in similar wrongdoing relating to their public employment and who had been
 2 terminated for such wrongdoing; implying that Eklund had misused his office or had engaged in
 3 conduct similar to the other five employees; and omitting material information necessary to avoid the
 4 conclusion that Eklund had misused his office, or acted equally wrongfully as certain other
 5 employees or had obtained special benefits in violation of policy or more than members of the public
 6 could readily obtain.

7 32.5. In September 2004 SMC provided the Seattle Times with additional negative information
 8 about Eklund's conduct in connection with a combined charities campaign, in an effort to impugn
 9 Eklund further.

10 32.6. In about October of 2004 the Seattle Times published an article entitled "Court cut parking
 11 and traffic fines, deeply, wouldn't tell mayor," which stated among other things that the SMC
 12 withheld information concerning reduced parking and traffic tickets from the executive branch, that
 13 analysts working for the mayor repeatedly asked for information about fine reductions but were told
 14 by court officials that detailed records couldn't be produced, and that "Deputy Mayor Tim Ceis said
 15 he didn't find the court's explanation on financial records credible. 'This is a trust issue we've got to
 16 deal with,' he said. 'we've been asking for this information, and the court said it didn't exist. I want
 17 to know why because obviously the reports did exist.'"

18 32.7. The October 2004 Seattle Times article also stated that "In June 2004 Department of Finance
 19 analyst Barbara Gangwer asked Eklund several times for breakdowns of various court financial
 20 records, including the amounts of contested fines and their reductions. ...In an interview, Gangwer
 21 confirmed she sought the information and never got it from the court. 'It was a bit of a mystery that I
 22 didn't get anything,' she said. 'My understanding was that they cannot track the dollar amounts per
 23 didn't get anything,' she said. 'My understanding was that they cannot track the dollar amounts per
 24 didn't get anything,' she said. 'My understanding was that they cannot track the dollar amounts per

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1 case. I got a little annoyed because I hadn't seen anything."

2 32.8. The statements made by the Seattle Times referenced in the above paragraphs 32.6 and 32.7
 3 were true.

4 32.9. The October 2004 Seattle Times article referenced above stated that "Eklund was fired in July
 5 for asking a co-worker to help him delay payment on several parking tickets"; "Bonner rejected
 6 [Eklund's] claim that [Eklund] was fired because of his reports on fine reductions"; a court
 7 disciplinary memo said that one in Eklund's position must "demonstrate[] personal integrity and the
 8 highest of ethical standards," and that "Bonner and other court officials said they couldn't comment
 9 further on Eklund's case because of the whistleblower investigation." Under the circumstances, the
 10 refusal to comment further in October 2004 amounted to additional action by defendants to damage
 11 Eklund.

12 33. The express or implied statements referenced in paragraph 32 were false and defamatory and
 13 were intentional and malicious and constituted further retaliation and punishment, as well as an
 14 attempt to pre-discredit Eklund in advance should he pursue his rights, and resulted in publication of
 15 articles in the Seattle Times in August 2004, and in October 2004 and there after linking Eklund
 16 with other SMC employees who engaged in wrongdoing concerning "fixing" their own parking
 17 ticket fines.

18 34.1 The termination and punitive action against Eklund was in violation of public policy
 19 protecting disclosure and the public right to know, and was part of a broader set of wrongdoing by
 20 SMC including covering up information needed by the City and the public to manage city and SMC
 21 budgets and prevent violations of statutes; the acts complained of were undertaken for political
 22 reasons, simply to protect the SMC's political "turf" (budgets, positions and functions) from

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1 accountability to the public, and were in no way part of any attempt to properly protect judicial
2 independence or functions that should be confidential.

3 34.2 The termination and punitive action against Eklund violated public policy in favor of
4 disclosure of revenue information and public policy that departments and high level employees of the
5 City such as SMC and defendants here (a) should not lie, or misrepresent, or omit material facts
6 regarding revenue information to the Department of Finance or the executive or legislative branches
7 of the City; (b) should not misrepresent SMC's ability to provide requested information, (c) should
8 not evade or fail to cooperate with DoF's information requests, (d) should not hire someone like
9 Eklund to develop such information then terminate him because he supported disclosing such
10 information to DoF; (e) should not misuse their public offices to protect their own jobs by providing
11 misinformation or failing to provide information to DoF; (f) should not try to suppress information
12 that would be publicly disclosable and/or (g) should not violate applicable ethics rules of the City, of
13 SMC, and the bodies regulating judicial conduct, applicable to their performance of their offices
14 and/or in their relations and communications with the executive and legislative branches, including
15 ethical rules that require honesty, candor, disclosure, and good faith, and prohibit misuse of office,
16 obtaining special benefits, and similar misconduct such as "fixing" or hiding revenue information to
17 protect jobs or political turf.

18
19 35. The foregoing acts and omissions were intentional, and not in good faith performance of
20 official duties.

21 36. The foregoing acts and omissions caused and proximately caused Eklund to suffer damages,
22 including economic loss, loss of income, loss of benefits, emotional distress, general damages, and
23 other losses and damages.
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1 **LEGAL CLAIMS**

2 **FIRST CAUSE OF ACTION - Wrongful Discharge in Violation of Public Policy**

3 37. Plaintiff re-alleges and incorporates herein all paragraphs of this pleading as though fully set
 4 forth herein.

5 38. Eklund was employed by defendant the City of Seattle.

6 39. In 2003-2004 Eklund was directed to produce reports and/or information regarding
 7 performance and revenue data for a City department, the SMC.

8 40. During this time another department, DoF, requested revenue data from SMC including data
 9 that Eklund generated.

10 41. This information was to be used to generate revenue projections for the executive and
 11 legislative branches of the City and was material for allowing those branches to make public policy
 12 decisions including budget decisions, decisions as to whether to cut judgeships at SMC, decisions as
 13 to whether to take over the parking function at SMC, decisions as to whether to consolidate SMC
 14 functions, and decisions as to whether to maintain or limit judicial discretion at SMC.

15 42. After Eklund prepared these reports and/or information, the SMC and defendants directed
 16 Eklund to hide the data and reports from DoF, to not reveal the data and reports, to prevent creating a
 17 public record of the data and reports, to not let DoF poke around in such data, and to not disclose the
 18 data and reports or SMC's ability to provide same outside of the top level of SMC management.

19 Defendants also directed Eklund to not reveal a new requirement of a 50% floor on cutting parking
 20 tickets.

21 43. Eklund protested these instructions starting in late 2003.

22 44. In about June 2004 Eklund provided some of the data to the Department of Finance.

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1 45. Defendants caused Eklund to be terminated on or about July 29, 2004.

2 46. Starting in late 2003 defendants took other adverse job action against Eklund; and after the
 3 termination defendants took other punitive action against Eklund, ensuring that his personnel file
 4 would contain derogatory information and would be available to the media.

5 47. Such adverse job actions, termination and punitive actions were contrary to public policy of
 6 the State of Washington and/or City of Seattle in that this violated broader policies of public
 7 discourse, policy concerning disclosure of revenue information to revenue officials such as the
 8 Department of Finance, and the executive and legislative branches; policy against lying or
 9 misrepresenting revenue data to such persons, or the ability to generate such data; and policy
 10 requiring that City offices be carried out with honesty, candor, and good faith and not for any
 11 personal benefit or private purpose; as well as other policy referenced in paragraph 34.2 above.

12 48. Defendants seized on the fortuity that other SMC employees had engaged in inappropriate
 13 conduct regarding parking tickets to provide a sham reason for the termination, further violating
 14 public policy and misusing their offices, intending to link Eklund with such other employees,
 15 knowing that the resultant negative information in his personnel file would forever and falsely
 16 discredit him, punish him and provide a further cover for their improper discharge of him contrary to
 17 public policy.

18 49. Eklund is entitled to recover damages from defendants based on wrongful discharge contrary
 19 to public policy.

20 50. Because defendants acted intentionally, Eklund is entitled to recover damages for emotional
 21 distress from defendants based on wrongful discharge contrary to public policy.

22 51. Defendant the City and the individual defendants are severally and jointly liable to Eklund for

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1 all such damages and loss based on wrongful discharge contrary to public policy because the
 2 defendants coordinated their actions, acted in concert and/or acted with intent, or not in good faith
 3 performance of official duty, or knowing they were violating Eklund's rights.

4 **SECOND CAUSE OF ACTION -- Lack of Proper Name Clearing Hearing, 42 U.S.C. § 1983**

5 52. Plaintiff re-alleges and incorporates herein all allegations in this pleading as though fully set
 6 forth herein.

7 53. The individual defendants were acting under color of state law in connection with their
 8 conduct and omissions outlined in this pleading.

9 54. In Washington State, public agency decisions terminating public employment and the related
 10 negative information placed in a personnel file are disclosable to the public.

11 55. As a result, a public employee such as Eklund has a constitutionally protected liberty interest
 12 in connection with termination of employment.

13 56. As a result, a public employee such as Eklund who is threatened with termination has a right
 14 to have a name hearing clearing a/k/a a "Loudermill" hearing.

15 57. Here there was no proper name clearing hearing because among other reasons the relevant
 16 decision maker, Judge Fred Bonner, did not hear or consider Eklund's response to the allegations
 17 concerning parking tickets; the individual defendants as decision makers on Eklund's termination
 18 similarly did not hear or consider Eklund's response; and also because Judge Fred Bonner and the
 19 other defendants were personally implicated in Eklund's complaint of retaliation, making defendants
 20 incapable of providing a proper name clearing hearing, due to conflict of interest.

21 58. The right to a name clearing hearing in which the decision maker actually heard and
 22 considered the employee's response and in which the decision maker did not have a conflict of

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1 interest was clearly established in July of 2004 in the State of Washington.

2 59. Reasonable officials would have known at that time that (a) not hearing or not considering
 3 Eklund's complaint of retaliation, or (b) adjudging a complaint of retaliation directed at themselves,
 4 in violation of ethical guidelines and standards such as conflict of interest rules, violated the federal
 5 right to a name clearing hearing.

6 60. Defendants also failed to give Eklund any hearing prior to the time Parcher revised the
 7 disciplinary findings and in effect re-confirmed the major findings and again placed additional
 8 negative information in Eklund's personnel file.

9 61. Eklund was damaged by the violation of his right to a proper name clearing hearing.

10 62. Eklund is entitled to recover damages from the individual defendants concerning the violation
 11 of his right to a proper name clearing hearing.

12 63. Because defendants acted intentionally, Eklund is entitled to recover damages for emotional
 13 distress from defendants based on violation of his right to a name clearing hearing.

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64. Defendants are severally and jointly liable to Eklund for all such damages and loss based on violation of the right to a proper name clearing hearing because the defendants coordinated their actions, acted in concert and/or acted with intent, or not in good faith performance of official duty, or knowing they were violating Eklund's rights.

65. Defendant the City is liable for the violation of a right to a proper name clearing hearing because the actions taken by the individual defendants were official actions of defendant the City and the individual defendants were part of the body that represented the City in connection with Eklund's termination.

66. Eklund is entitled to injunctive relief against defendant the City including an order removing the negative information from his personnel file.

THIRD CAUSE OF ACTION-- Whistleblower Retaliation

67. Plaintiff re-alleges and incorporates herein all allegations in this pleading as though fully set forth herein.

68. Defendants were a local government and/or governmental officials.

69. Defendants retaliated against Eklund by implementing adverse job conditions, terminating him, and/or reprimanding him in writing.

70. Such retaliation was because Eklund provided information in good faith that improper governmental action occurred.

71. The improper governmental action here included but is not limited to violation of ethics rules applicable to the City employees and judicial officers, abuse of authority, misuse of office, and violation of state laws.

72. Eklund provided written notice of claims of retaliation to the Mayor and to the Seattle Ethics

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and election Commission, as well as to SMC.

73. Eklund is entitled to recovery and relief based on a whistleblower claim under RCW 42.41.040.

74. Defendants are severally and jointly responsible or liable to Eklund for any damages or relief available under this claim because the defendants coordinated their actions, acted in concert and/or acted with intent, or not in good faith performance of official duty, or knowing they were violating Eklund's rights.

NOW, THEREFORE, plaintiff Bruce Eklund prays for the following relief:

1. For a judgment in an amount for damages to be proven at the time of trial;
2. For costs and attorney fees incurred herein.
3. For injunctive relief requiring defendant the City of Seattle to remove from plaintiff's personnel file all negative information concerning the investigation into his handling of his parking tickets and his termination; and
4. For any such other relief as is available as the Court may deem equitable and proper.

DATED this 12th Day of March, 2008.

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THIRD AMENDED COMPLAINT
 WRONGFUL DISCHARGE IN VIOLATION OF
 PUBLIC POLICY, ETC - 16

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37. Defendants the City and those employed by SMC are severally and jointly liable to Eklund for all such damages and loss, among other reasons, because the defendants employed by the SMC acted in concert and/or acted with intent, or not in good faith performance of official duty, or knowing they were violating Eklund's rights. ¶

38. Eklund may recover based on several legal claims including breach of contract of employment; wrongful discharge; discharge in violation of public policy (policies in favor of public disclosure, agency accountability, whistle blowing, revealing violations of law, requiring compliance with state statutes, judicial independence and otherwise); whistleblower laws; violation of and conspiracy to violate the Washington State Public Disclosure Act (PDA) including but not limited to refusing to comply with requests for information made by City officials and in substance adopted by Eklund, and anticipatory violations of the PDA; negligence; defamation, including relating to statements made to the media and statements made to the public in Eklund's personnel file which defendants knew was subject to disclosure and could be and would be released to the public; invasion of privacy and false light; violation of state and/or federal constitutional rights to free speech, political participation and/or to public employment and/or requiring proper termination thereof including termination and publication of statements in a personnel file available to the public only with a proper and prior name clearing or "Loudermill" hearing. ¶

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THIRD AMENDED COMPLAINT
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